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OFFICE OF PETITIONS

In re Application of :
Wie, et al. :
Application No. 10/618,427 :
Filed: July 10, 2003 :
Attorney Docket No. 07451 0002-03 :
DECISION ON PETITION

This is a decision on the "PETITION UNDER 37 C.F.R. § 1.53(e)(2)", filed October 27, 2004, requesting that the above-identified application be accorded a filing date of July 10, 2003, with Figure 15F of the drawings as part of the original disclosure.

The petition is **DISMISSED**.

The application was filed on July 10, 2003. However, on September 2, 2004, the Office mailed a "Notice of Omitted Item(s) in a Nonprovisional Application", stating that the application had been accorded a filing date of July 10, 2003; however, Figure 15F described in the specification appeared to have been omitted.

In response, the present petition was filed. Petitioners admit that Figure 15F was absent from the papers filed with the Office on July 10, 2003. However, petitioners request that Figure 15F be incorporated by reference into the above-identified application.

Figures not present on the filing date cannot be considered a part of the original disclosure of the application. As Figure 15F was not present in the Office on July 10, 2003, the application can not be accorded the July 10, 2003 filing date with the drawing of Figure 15F as a part of the original disclosure.

Accordingly, the Notice mailed on September 2, 2004, was correct in stating that Figure 15F of the drawings appeared to have been omitted. Therefore, the requirement for the omitted figure of drawings was proper and will not be withdrawn.

However, a review of the application file reveals that the application transmittal letter included an incorporation by reference statement.

MPEP § 201.06(c) states that:

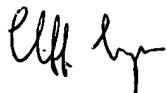
. . . an applicant may incorporate by reference the prior application by including, in the application-as-filed, a statement that such specifically enumerated prior application or applications are "hereby incorporated herein by reference." The statement may appear in the specification or in the application transmittal letter. The inclusion of this incorporation by reference of the prior application(s) will permit an applicant to **amend** the continuing application to include any subject matter in such prior application(s), **without the need for a petition** (emphasis added).

Obviously, in view of the incorporation by reference of parent application no. 10/189,231, the drawing of Figure 15F is not new matter if it was a part of the disclosure of that application.

The \$130 petition fee will not be refunded because the petition was not necessitated by any error on the part of the United States Patent and Trademark Office.

The application is being returned to Group Art Unit 2131 for consideration by the examiner of the petition and drawing figure filed October 27, 2004, as an amendment.

Telephone inquiries specific to this matter should be directed to the undersigned at 571-272-3207.



Cliff Congo
Petitions Attorney
Office of Petitions